

## **SAMPLE TERMS AND CONDITIONS\* – DNRC RESIDENTIAL LEASE LOTS**

### **I. FEES**

- A. Fee Requirement: This special use authorization shall require payment in advance of an annual rental fee.
- B. Appraisals:
1. Appraisals to ascertain the fair market value of the State land will be conducted in accordance with MCA 77-1-208. The appraisal of State land is determined by the Department of Revenue.
- C. Fee Determination:
1. The fee shall be 5 percent of the appraised fair market fee simple value of the State land under MCA 77-1-208. The annual fee will be changed with each new appraisal of the State land, every 5 years. The 5 percent lease rate reflects the cost to the lessee of leasing state land as stipulated herein.
- D. Initial Fee: In the first year of this lease the lessee shall pay a rental rate equivalent to the rental rate paid in the last year of the expired lease plus 20 percent of the difference between the rental rate paid in the last year of the expired lease and the appraised value of the lease as calculated by the Department of Revenue under Section 77-01-208, MCA.

In the second year of this lease the lessee shall pay a rental rate equivalent to the rental rate paid in the last year of the expired lease plus 40 percent of the difference between the rental rate paid in the last year of the expired lease and the appraised value of the lease as calculated by the Department of Revenue under Section 77-1-208, MCA.

In the third year of this lease the lessee shall pay a rental rate equivalent to the rental rate paid in the last year of the expired lease plus 60 percent of the difference between the rental rate paid in the last year of the expired lease and the appraised value of the lease as calculated by the Department of Revenue under Section 77-1-208, MCA.

In the fourth year of this lease the lessee shall pay a rental rate equivalent to the rental rate paid in the last year of the expired lease plus 80 percent of the difference between the rental rate paid in the last year of the expired lease and the appraised value of the lease as calculated by the Department of Revenue under Section 77-1-208, MCA.

In the fifth year of this lease, and thereafter, the lessee shall pay a rental rate equivalent to the appraised value of the lease as calculated by the Department of Revenue under Section 77-1-208, MCA.

**Rental Rate:** The appraised value for lease years 2006 through 2010 is **\$147,016.00**. As explained above, the rental rate is 5% of the current market value of the lease. This rate will be phased in over the first five year period as follows:

|             |                   |             |                   |
|-------------|-------------------|-------------|-------------------|
| <b>2006</b> | <b>\$4,620.25</b> | <b>2019</b> | <b>\$6,668.16</b> |
| <b>2007</b> | <b>\$5,302.89</b> | <b>2010</b> | <b>\$7,350.80</b> |
| <b>2008</b> | <b>\$5,985.52</b> |             |                   |

- E. Payment Schedule: Based on the criteria stated herein, the annual payment is as shown above through lease year 2011, and the fee is due and payable annually or semi-annually postmarked on or before **March 1 or September 1**. Payments will be credited on the date received by the designated collection officer or deposit location. If the due date(s) for any of the above payments or fee calculation statements fall on a non-work day, the charges shall not apply until the close of business of the next workday. Payment is considered made if it is post marked by the due date. **WHEN THE LESSEE ELECTS TO MAKE ANNUAL PAYMENTS;** the fee is due and payable, postmarked on or before March 1<sup>st</sup> each year. If payment is made after March 1<sup>st</sup>, the lessee must pay both the rental payment and a \$25.00 penalty on or before April 1<sup>st</sup>. Failure to make payment by April 1<sup>st</sup> automatically cancels the lease. **WHEN THE LESSEE ELECTS SEMI-ANNUAL PAYMENTS:** One-half the rental is due by March 1<sup>st</sup> and one-half is due by September 1<sup>st</sup>. If payment is made after March 1<sup>st</sup> or September 1<sup>st</sup>, the lessee must pay both the rental payment and a \$25.00 penalty on or before April 1<sup>st</sup> or October 1<sup>st</sup>, respectively. Failure to make the rental or the penalty payment by April 1<sup>st</sup> or October 1<sup>st</sup> automatically cancels the lease. Payment is considered made if it is postmarked by the due date.
- F. Place of Payment: All payments required by this lease shall be made to the Department of Natural Resources and Conservation, P.O. Box 201601, Helena, MT 59620-1601, or your local Area Office or Unit Office.
- G. Renewal of Lease: If all rentals due the State under this lease have been paid and the terms of this lease have not been violated, the lessee may make application to the lessor, within thirty (30) days prior to its expiration, for an additional term not to exceed **15** years at such rental as the Director of the Department of Natural Resources and Conservation may determine is a fair return to the State, and subject to periodic reviews of the rental as herein provided; however, should the Director of the Department of Natural Resources and Conservation in his/her discretion decide it is in the best interest of the State not to renew this lease and notify the lessee at least six (6) months prior to the expiration of the lease of such decision, the lessee shall have no renewal rights.
- H. Nonpayment Constitutes Breach: Failure of the lessee to make the annual payment, penalty, interest, or any other charges when due shall be grounds for termination of this authorization. Payments postmarked after March 1 and before April and (if billed semi-annually) after September 1 and before October 1 will be assessed a \$25 late fee. The Department may, within 30 days of cancellation, reinstate this lease upon payment of the rental owing plus a penalty not to exceed three times the annual rental, except that a penalty may not be less than \$500.

## **II. AUTHORITY AND USE AND TERM AUTHORIZED.**

- A. The authorized personnel under this lease is the Area or Unit Manager, or a delegated lease administrator.
- B. The State reserves all rights and interests to the land under this lease other than those specifically granted by this lease. These reservations include, but are not limited to, the following:
1. Mineral and timber reservation: All coal, oil, gas and other minerals and all deposits of stone, gravel, sand, gems, and other non-minerals valuable for building, mining or other commercial purposes, and all timber and trees, are excepted from the operation of this lease. The lessee shall not open any mine or quarry or work or dig any of the minerals

or non-minerals mentioned above from any mine or quarry, pit or diggings situated on the said land whether such mine, quarry, pit or diggings was open at the date of this lease or not. The lessee shall not cut, remove, use or destroy any such timber or standing trees and shall not allow or permit any other person to cut, use, remove or destroy such timber or standing trees unless such person is authorized by the lessor.

2. **Additional Reservations:** The State reserves a right-of-way to the United States over the land above-described for ditches, canals, tunnels, telephone and telegraph, and power lines now constructed or to be constructed by the State of Montana, in furtherance of the reclamation of arid lands. The State also reserves the right of granting rights-of-way on the above-described land for other purposes. The State also reserves to itself and its representatives and lessees the right to enter upon the lands embraced by this lease for purpose of prospecting and exploring for minerals and for the purpose of mining, drilling for, developing and removing such minerals and for carrying on all operations related thereto; it also reserves to itself and its lessees the right to enter upon the said lands for the purpose of cutting and removing timber, wood and other forest products, and for removing gravel, sand, building stone, and other non-minerals. The State reserves the right to grant permits for advertising such as signs and billboards. The State or its authorized representative may from time to time, at any reasonable hour, enter upon and inspect the leased premises, site or any portion thereof or improvements thereon to ascertain compliance with this lease, but without obligation to do so or liability thereof.
3. **Right to Entry:** Representatives of the State Historical Society of the State of Montana shall at all reasonable times, upon written notification to the Department of Natural Resources and Conservation prior to entry, have the right to enter into and upon the premises for the purpose of carrying out the duties assigned the Historical Society by the State Antiquities Act, 22-3-4, MCA.
4. **Public Use:** Permission to close lands categorically under ARM 36.25.150 is hereby granted, and no further permission is required. The leased premises are categorically closed to the public under Administrative Rule 36.25.150. For those leased properties that are contiguous, the public can only walk through the premises to access other state land. No camping, fishing, picnicking, etc. is allowed.
5. This lease authorizes only personal residential use of a noncommercial nature by the lessee, members of the lessee's immediate family, ranch manager and guests, excluding use in association with an adjacent agricultural and grazing lease.
6. Unless specifically provided as an added provision to this lease, this authorization is for site occupancy and does not provide for the furnishing of structures, road maintenance, water, fire protection, or any other such service by the State, utility association, or individual.
7. **Unlawful Use:** If any part of the lands or premises under this lease are used or allowed or permitted to be used for any purpose contrary to the laws of this state or the United States, such unlawful use shall, in the discretion of the lessor, constitute sufficient reason for the cancellation of the lease.

8. Multiple Use Management: Pursuant to the obligations imposed by law to administer State lands under a multiple use management concept, the State reserves the right to dispose of any and all interests in the above-described land, subject, however, to such specific interests granted to the lessee under the terms of this lease.
- C. Termination at End of Term: This authorization will terminate on **February 28, 2021**.

### **III. IMPROVEMENTS.**

- A. Nothing in this lease shall be construed to imply permission to build or maintain any improvement not specifically named on the face of this lease or approved in writing by the lease manager in the operation and maintenance plan. New construction will require approval of the lease manager. Unauthorized improvements are not compensable upon expiration or cancellation.
- B. All plans for development, layout, construction, reconstruction or alteration of improvements on the lot, as well as revisions of such plans, must be acceptable to the lease manager. Such plans must be approved by the lease manager before the commencement of any work.
- C. Water Rights: Any water right appropriated or secured on State land by any individual or party for use on or off such state land shall be appropriated or secured in the name of the Department of Natural Resources and Conservation. DNRC shall be notified prior to such development or appropriation of water right.
- D. Lessor Lien: The lessor shall have a lien upon all buildings, structures and other improvements for payment of the rentals specified herein.
- E. Improvements: If the land under this lease is sold to some other person than the present lessee, or is leased to some other person while the present lessee owns improvements lawfully remaining thereon, on which the State has no lien for rentals or penalties, and which the lessee desires to sell and dispose of, such purchaser or new lessee shall pay the former lessee the reasonable value thereof at the time the new lessee or purchaser takes possession thereof. In case the former lessee and the new lessee or purchaser is unable to agree on the reasonable value of such improvements, arbitration shall take place in accordance with 77-6-306, MCA.

Any lessee has 60 days from the expiration of the lease to remove all improvements from the leased or licensed premises. The removal of improvements must be conducted within the terms of a new land use license, for a fixed sum of 1/6 of the most recent year's lease fee or \$50, whichever is the greater.

If the lessee does not wish to remove the improvements, but rather chooses to be compensated for the improvements, the lessee shall be responsible for any applicable tax assessment.

If, after two years from the expiration of the lease, no new lessee is found, the department shall provide written notice to the former lessee that unless the improvements are removed within 60 days, the improvements will become the property of the State.

If a new lessee is found within two years of the expiration of the lease, during the pendency of the improvement valuable process, including arbitration and appeal, the new lessee shall

place in escrow an amount equal to the assessed value of the improvements as per Department of Revenue assessment, plus any applicable tax assessment. Nothing herein will prevent the Department from issuing a lease during the pendency of the valuation process.

If, during the two-year period described above, the prior lessee wishes to remove the improvements, the removal can occur only during those times when the leased or licensed property is not being offered for competitive bid.

Determination of compensation for improvements through the arbitration process shall utilized standard appraisal procedures, giving full consideration to the improvement's condition, remaining economic life, and shall be the estimated cost to construct, at current prices, a building with equivalent utility as of the date of the lease's expiration.

- F. Taxes: The lessee shall pay all taxes, special assessments, levies, fees, and other governmental charges of every kind or nature that may be levied by any and all federal, state, county, municipality, and any other taxes or assessing authority upon the improvements and property owned by lessee on or about the leased premises during the term of this lease. Payment shall be made prior to delinquency of taxes, special assessments, levies, fees, and other governmental charges. Lessee shall cause all taxes imposed upon all improvements situated in, on or about the premises, to be levied or assessed separately from said leased premises and not as a lien thereunder.

#### **IV. RESPONSIBILITIES OF LESSEE.**

- A. Laws and Rules: The lessee agrees to comply with all applicable federal, state, county, and municipal laws, ordinances, and regulations in effect at the date of this lease, or which may, from time to time, be adopted, and which do not impair the obligations of this contract and which do not deprive the lessee of an existing property right recognized by law. The lessee, in exercising the privileges granted by this lease, shall comply with all present and future regulations of the DNRC which are applicable to the area or operations covered by this lease. However, the DNRC assumes no responsibility for enforcing laws, regulations, ordinances and the like which are under the jurisdiction of other government bodies.
- B. The lessee shall exercise diligence in preventing damage to the land and property of state school trust lands. The lessee shall abide by all restrictions on fires which may be in effect at any time and take all reasonable precautions to prevent and suppress fires. The lessee shall make reasonable efforts to suppress any fire that exists and report it to the proper firefighting authority. The lessee assumes all risk of loss to the improvements resulting from acts of God, wildland fire, or catastrophic events, including but not limited to, avalanches, rising waters, high winds, falling limbs or trees and other hazardous natural events.
- C. The Lessee shall protect, in place, all land survey monuments and private property corners. In the event that such land markers or monuments are destroyed, the Lessee shall see that they are reestablished in the same location.
- D. No soil, trees, or other vegetation may be removed from the state school trust lands without prior permission from the lease manager.
- E. The lessee shall maintain the improvements and premises to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the lease manager. The lessee shall fully repair

and bear the expense for all damage, ordinary wear and tear, to state school trust lands, roads and trails caused by the lessee's activities.

- F. The lessee has the responsibility of inspecting the site, authorized rights-of-way, and adjoining areas for dangerous trees, hanging limbs, and other evidence of hazardous conditions which could affect the improvements and or pose a risk of injury to individuals. After securing permission from the lease manager, the lessee shall remove such hazards.
- G. In case of change of permanent address or change in ownership of the recreation residence, the lessee shall immediately notify the lease manager in writing.
- H. Utility Installation: The lessee, at its sole cost and expense, shall determine the availability of, and shall cause to be installed in, on, and about the leased premises, all facilities necessary to supply thereto all water, sewer, gas, electricity, telephone and other like services required in lessee's operations hereunder. Lessee agrees to pay all connection or acreage assessments or charges levied by any public utility, agency or municipality with respect to their services. Notwithstanding the foregoing, lessee shall not enter into any contract or agreement with any city, county, or other governmental agency or body or public utility with reference to sewer lines or connections, water lines or connections, or street improvements relating to the leased premises, without the prior written consent of the State, which consent shall not reasonably be withheld.
- I. Noxious Weeds and Pests: The lessee agrees, at his/her own expense and cost, to keep the land free from noxious weeds, and if noxious weeds are present, then chemical application or other appropriate weed control measures must occur in time to prevent seed-set according to state law and to exterminate pests to the extent as required by the Department. In the event the land described in this lease shall be included in a weed control and weed seed extermination district, the lessee shall be required to comply with the provision of 77-6-114, MCA, which provides as follows: "It shall be the duty of the Board in leasing any state land to provide in such lease, that the lessee of lands so leased lying within the boundaries of any noxious weed control and weed seed extermination district shall assume and pay all assessments and taxes levied by the Board of County Commissioners for such district on such state lands, and such assessment and tax levy shall be imposed on such lessee as a personal property tax and shall be collected by the County Treasurer in the same manner as regular personal property taxes are collected." Failure to comply with this provision when directed to do so by the Department may result in cancellation of the entire lease.
- J. Road Maintenance: The lessee is responsible for the maintenance commensurate with their lease of all state access roads to the leased premises.
- K. Improvement Maintenance: The lessee is responsible for maintaining their improvements.

## **V. LIABILITIES.**

- A. This lease is subject to all valid existing rights and claims outstanding in third parties. The State of Montana is not liable to the lessee for the exercise of any such right or claim.
- B. The lessee shall be liable for any damage suffered by the State of Montana resulting from or related to use of this lease, including damages to state land resources such as the removal of trees, shrubs, and vegetation, and costs of fire suppression, subject to civil and criminal remedies.



- C. **Lessee Liability:** This lease is made upon the express condition that the lessee shall assume all liability for any injury, property damage or loss by any persons and for any injury, property damage or loss to any employee or property of lessee, its agents or employees, or third persons, or to the lessee, from any cause or causes whatsoever while in or upon the said premises or any parts thereof during the terms of this lease or occasioned by the occupancy for use of said premises or any activity carried on by the lessee in connection therewith. Lessee shall indemnify lessor and save, protect, defend, and hold lessor harmless from any and all liability, loss, damage, expense (including legal expenses and reasonable attorney fees), causes of action, suits, claims or causes whatsoever while in or upon said premises or any part thereof during the terms of this agreement or occasioned by any occupancy, and all suits which may be brought against lessor, either alone or in conjunction with others, upon any such liability or claim(s). Lessee shall satisfy, pay and discharge any and all judgments and fines that may be recovered against lessor in any such action(s), provided, however, that lessor shall have given lessee written notice of any such claim or demand promptly after receiving notice thereof.

## **VI. TRANSFER, SALE, AND RENTAL.**

- A. **Transferability Upon Death of the Lessee:**
1. If the lessee of this lease is a married couple and one spouse dies, this lease will continue in force, without amendment or revision, in the name of the surviving spouse upon receipt of a death certificate.
  2. If the lessee of this lease is an individual who dies during the term of this lease and there is no surviving spouse, the lease will be assigned incorporating current DNRC policies and procedures for the remainder of the deceased lessee's term to the properly designated heir(s) as shown by an order of a court, bill of sale, or other evidence to be the owner of the improvements.
- B. **Divestiture of Ownership:** If the lessee through voluntary sale, transfer, enforcement of contract, foreclosure, or other legal proceeding shall cease to be the owner of the physical improvements, this lease shall be assigned to such person to whom title has been transferred only with approval by DNRC.
- C. **Notice to Prospective Purchasers:** When considering a voluntary sale of the residential improvements, the lessee shall provide a copy of this special lease to the prospective purchaser before finalizing the sale. The lessee cannot make binding representations to the purchasers as to whether the DNRC will reauthorize the occupancy.
- D. **Assignment:** If all rentals due have been paid and the terms of the lease have not been violated, the lease may be assigned on blank forms provided for that purpose by the Department of Natural Resources and Conservation, but no such assignment shall be binding on the State unless the assignment is filed with the Department, approved by it, and payment made of the assignment fee. Prior to assignment, the lease may be inspected by the lease manager to ensure the leased premises are in compliance with the terms and conditions of the lease.

## **VII. REVOCATION.**

- A. Revocation for Cause: This lease may be revoked for cause by the Department upon breach of any of the terms and conditions of this lease or applicable law. Prior to such revocation for cause, the lessee shall be given notice and provided a reasonable time--not to exceed ninety (90) days--within which to correct the breach.
- B. Cancellation: The lessor shall have the power and authority in his discretion to cancel a lease for any of the following causes: for fraud or misrepresentation, or for concealment of facts relating to its issue, which if known would have prevented its issue in the form or to the party issued; for using the land for other purposes than those authorized by the lease, and for any other reasonable cause which in the judgment of the lessor makes the cancellation of the lease necessary in order to do justice to all parties concerned and to protect the interest of the State. Such cancellation shall not entitle the lessee to any refund for rentals paid or exemption from the payment of any rents, penalties or other compensation due the State. Lease cancellation is subject to appeal as provided in Section 77-6-211, MCA.
- C. Request to Cancel Lease: The lessee may request the right to surrender and relinquish the lease, in whole or in part, by writing to the Department of Natural Resources and Conservation at least thirty (30) days prior to the termination of any rental year. The Director of the Department of Natural Resources and Conservation may grant or deny the request and may condition the right to surrender and relinquish upon the payment to the State of reasonable damages caused by the surrender.
- D. Surrender of Premises upon Termination of Lease: The lessee shall upon the termination of this lease peaceably yield up and surrender the possession of the land to the State of Montana or its agents or to subsequent lessees and grantees.

## **VIII. MISCELLANEOUS PROVISIONS.**

- A. The State of Montana reserves the right to enter upon the State property to inspect for compliance with the terms of this lease.
- B. Issuance of this lease shall not be construed as an admission by the State as to the title to any improvements. The State disclaims any liability for the issuance of any lease in the event of disputed title.
- C. Special Conditions:
  - 1. The lease premises must be kept free of debris, garbage and any other unsightly objects. This includes lakeshores or streams when adjacent to the site. The lessor may, at its discretion, require removal of junk vehicles, old building materials, improvements that are in disrepair, etc. Open pits, ditches, or other unsafe conditions must be eliminated from the site.
  - 2. Falling of live or green trees is prohibited without permission from the Unit/Area manager and/or a permit issued by the Department.
  - 3. Disturbance of peace of the community will not be tolerated.
  - 4. No livestock will be kept on the area described in this lease.
  - 5. The lessee will manage the lease to prevent resource damage and will comply with all county, state, and federal laws that may apply to the lease property.
  - 6. Pesticides will be used, stored, and disposed of in accordance with the label.
  - 7. Incinerators, fireplaces, stoves or any other type of burner must be fireproofed by use of spark proof screens. All fires must be extinguished prior to leaving the area.



8. The use of firearms or fireworks is not permitted on the area.
9. Area must be kept free of fire hazards. Forest litter (needles, twigs, duff) must be removed for a distance of ten feet around all buildings and from roof tops. Tree limbs too close to the roof or chimneys must be removed.
10. No buildings except boat docks may be constructed within 100 feet of shoreline on river and lakes.
11. Only one dwelling will be allowed on each lot.

\* These sample terms and condition are subject to change. Please contact your local DNRC land office if you have any questions.